

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE)	No. 64260-0-I
PERSONAL RESTRAINT OF:)	
ERIC L. MIKOTA,)	DIVISION ONE
)	UNPUBLISHED OPINION
Petitioner.)	
)	FILED: April 5, 2010

PER CURIAM. Eric Mikota filed this personal restraint petition challenging the firearm enhancement to his sentence in Skagit County Superior Court No. 96-1-00595-8. Although his judgment and sentence became final in 1999 when this court filed the mandate in his direct appeal, Mikota claims that his petition is not subject to the time bar of RCW 10.73.090 because the judgment and sentence is invalid on its face. RCW 10.73.090(1); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). In particular, the judgment and sentence indicates that the charge included a deadly weapon enhancement and refers to a “D.W. finding” but imposes a five year firearm enhancement. Mikota also refers to 1) the information indicating that the State sought a deadly weapon enhancement with a reference to “RCW 9.94A.310” without identifying a specific subsection; 2) the jury instruction directing the jury to consider whether Mikota was armed with a “deadly weapon”; and 3) the special verdict form indicating the jury’s finding that Mikota was “armed with a deadly weapon.” See, e.g., Goodwin, 146 Wn.2d at 866 (plea agreement documents may be considered in evaluating claim of facial invalidity).

The Skagit County Prosecutor has conceded that the judgment and sentence is invalid on its face and Mikota is entitled to vacation of the firearm enhancement and remand to the trial court to impose the deadly weapon enhancement charged by the State and found by the jury. See, In re Pers. Restraint of Delgado, 149 Wn. App. 223, 204 P.3d 936 (2009) (where State charged defendants as being armed with deadly weapon without specifying the statutory section relating to firearm enhancements or deadly weapon enhancement and obtained special verdicts regarding use of deadly weapon, trial court's imposition of firearm enhancement not authorized by jury finding and resulted in actual prejudice of higher sentences).

We accept the concession. Accordingly, Mikota's firearm enhancement is vacated and the case is remanded to the trial court to impose a deadly weapon enhancement.

For the court:

Dwyer, A.C.J.
Schneider, C.J.
Leach, J.